



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. Van Haille McFarland
County Attorney
Maverick County
Eagle Pass, Texas

Dear Sir:

Opinion No. Q-1021

Re: Power of a county to assume
various functions of a municipal corporation which has
been dissolved.

In your letter of recent date you inquire with reference to the procedure for the abolishing of the corporate existence of a municipal corporation, but you correctly answer that question by reference to the statutes controlling.

You then ask the following questions:

"(1) Can the various functions of the city which has been dissolved be taken up and continued by the county?

"(2) Can the county become the owner of public utilities in the event there be no city to own them?"

These questions received the attention of our Supreme Court in *Sun Vapor Electric Light Co. v. Kenan*, 30 S. W. 868, in an opinion by Chief Justice Gaines. In that opinion Mr. Justice Gaines said:

"The powers which the Commissioners' Court may be compelled to exercise are defined in the Constitution in the following language:

"The County Commissioners

pose the County Commissioners' Court, which shall exercise such powers and jurisdiction over all county business as is conferred by this Constitution and the laws of the State or as may be hereafter prescribed.' Article 5, Sec. 18.

"The powers which the Legislature may require them to exercise are confined by this section to county business, and we think it clear that the administration of the effects of a dissolved corporation and the payment of its debts are not such business."

In *Edwards County v. Jennings*, 83 S. W. 585, the court said:

"Counties, being component parts of the State, have no powers or duties except those clearly set forth and defined in the Constitution and statutes."

In view of these holdings of our courts, we answer both of the above questions in the negative.

This conclusion, we think, is further supported by Article 9, Sec. 3 of our State Constitution, adopted in 1933, which permits counties of this State to adopt "Home Rule" charters, and authorizes the very powers inquired about, thus making clear that such power had not theretofore been given and making that method exclusive. This section of the Constitution applies to counties having a population of 62,000 or more, but it especially provides that the Legislature may authorize counties of less population to come under the provisions of the Act by the procedure set out in the section.

Yours very truly

ATTORNEY GENERAL OF TEXAS

ASR-MR APPROVED JUL 5, 1939

W. F. MOORE
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APPROVED OPINION COMMITTEE
BY R. W. F., CHAIRMAN